

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: October 7, 2003

TO : Ralph R. Tremain, Regional Director
Region 14

Will J. Vance, Officer-in-Charge
Subregion 33

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Sand, Gravel & Crushed Stone Workers
Union Local 681 (Austin Powder Company)
Case 33-CC-1347

This case was submitted for advice as to whether a Union observer photographing individuals entering and leaving a neutral reserved gate violated Section 8(b)(4)(i) and/or (ii)(B). We agree with the Region that in the circumstances of this case it did not.

Briefly, Austin Powder, the primary, performed blasting services for the operators of four stone quarries. The Union picketed on occasion at all four sites with area standards signs when Austin was present; the Region has concluded that the Union has a legitimate area standards dispute with Austin. Picketing occurred at the Fox River quarry on eight occasions between March and August 2003 when Austin was present. At that quarry, Fox River Stone Company had established a reserved gate for Austin's employees and suppliers, as well as a neutral gate for all others. On each occasion Fox River's employees, represented by another union, left work when the picketing began, pursuant to their rights under a collective-bargaining agreement.

During the Union's picketing on July 25, a nonrepresented Fox River employee left through the gate reserved for the primary Austin; the Union immediately commenced picketing at both gates. The Region has concluded that that expansion of picketing to the neutral gate was de minimis Section 8(b)(4)(B) activity not warranting further proceedings. On the next occasion that the Union picketed at the Fox River quarry, August 7, the Union stationed an observer at the neutral gate who, unlike the pickets at the primary gate who carried picket signs and wore no distinctive clothing, carried no sign but wore a yellow vest bearing the legend "OBSERVER AFL-CIO". As in the past, Fox River's represented employees walked off. The observer had a camera and took photographs at some point; it is unclear whether the observer took pictures only of the neutral gate

and possibly of vehicles, or whether he photographed neutral employees.¹ There has been no further picketing at that quarry because Fox River secured a replacement contractor for Austin.

We agree that the observer's conduct in taking photographs did not violate Section 8(b)(4)(B), because there is insufficient evidence that such conduct was coercive or induced employees to withhold their services. As the Region points out, even if the observer took pictures of vehicles carrying neutral employees through the unpicketed neutral gate, such conduct would not carry the coercive tendency of photographing neutral employees crossing a picket line.² There is no contention that the observer patrolled or otherwise engaged in conduct that could constitute signal picketing. In any event, it is unclear whether any neutral statutory employees were even present to see the photographing, since apparently the quarry's employees had walked off as usual in response to the Union's primary picketing at the reserved Austin gate. In all these circumstances, we conclude that the observer's photographing did not violate Section 8(b)(4)(B).

B.J.K.

¹The Union contends that the observer took photographs of the neutral gate to document the lack of signage directing Austin employees and suppliers to use the reserved gate, and may have taken photographs of vehicles suspected of carrying Austin personnel; the Employer contends that the observer took photographs of vehicles and individuals.

²Compare General Service Employees Union Local 73 (Andy Frain, Inc.), 239 NLRB 295, 307-08(1978).